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Cooperation between the United Nations and regional and other organizations: cooperation between the United Nations and the Organization for Security and Cooperation in Europe

Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Letter dated 5 November 2001 from the Chargé d'affaires a.i. of the Permanent Mission of the Netherlands to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the concluding statement by the Moderator of the International Seminar on Freedom of Religion or Belief in the OSCE Region: Challenges to Law and Practice, held in The Hague on 26 June 2001, as well as the working session reports and the agenda of the seminar (see annex).*

I should be grateful if you would have the present letter and its annex distributed as a document of the General Assembly, under agenda items 21 (i) and 119 (b).

(*Signed*) Michiel W. H. **Crom**
Chargé d'affaires a.i.

* The annex is being circulated in the language of submission only.

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Annex to the letter dated 5 November 2001 from the Chargé d'affaires a.i. of the Permanent Mission of the Netherlands to the United Nations addressed to the Secretary-General

Freedom of Religion or Belief in the OSCE Region: Challenges to Law and Practice

Agenda of the Seminar

09:00 - 10:00 OPENING SESSION

Moderator: Renée Jones-Bos, Dutch Ambassador-at-Large for Human Rights

Opening address by the Dutch Minister of Foreign Affairs, Jozias van Aartsen

Address by the OSCE Chairman-in-Office, Romanian Minister of Foreign Affairs, Mircea Dan Geoana

Keynote address by Hilde Johnson, former Norwegian Minister for International Cooperation and Human Rights

10:00 – 10.30 BREAK

10:30 - 12.30 WORKING SESSIONS

WORKING SESSION 1

RECOGNITION AND REGISTRATION OF RELIGIOUS AND BELIEF COMMUNITIES: WHAT IS PERMISSIBLE IN LAW AND PRACTICE?

Moderator: Dr. Antoanella-Iulia Motoc, Chairperson of the UN Sub-Commission on the Promotion and Protection of Human Rights / Member of the Advisory Committee on the Framework Convention for the Protection of National Minorities

Introduction by: Professor Cole Durham, Co-Chair of the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief

Rapporteur: Professor Malcolm Evans, Author of the book "Religious Liberty and International Law in Europe"

WORKING SESSION 2

RESTRICTIONS ON THE ACTIVITIES OF RELIGIOUS AND BELIEF COMMUNITIES: WHAT IS PERMISSIBLE IN LAW AND PRACTICE?

Moderator: John Packer, Director of the Office of the OSCE High Commissioner on National Minorities

Introduction by: Professor Manfred Nowak, Director of the Ludwig Boltzmann Institute of Human Rights

Rapporteur: Dr. Jeremy Gunn, Member of the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief

12:30 - 14:00 LUNCH HOSTED BY THE DUTCH MINISTRY OF FOREIGN AFFAIRS

14:00 - 16:30 CONTINUATION OF WORKING SESSIONS

16:30 - 17:00 TEA BREAK

17:00 - 18:00 CLOSING SESSION

Moderator: Renée Jones-Bos, Dutch Ambassador-at-Large for Human Rights

Reports from the working sessions, including follow-up measures

Comments from the floor

Concluding Seminar Statement by the Moderator

18:00 – 19:00 RECEPTION

Concluding Seminar Statement by the Moderator of the Seminar

On 26 June 2001, an international seminar on "Freedom of Religion or Belief in the OSCE Region: Challenges to Law and Practice" was held in "De Ridderzaal" (Hall of Knights) in The Hague, the Netherlands. The seminar was a joint initiative of the Romanian Chairman-in-Office of the OSCE and the Netherlands.

The seminar was opened by the Dutch Minister of Foreign Affairs, Jozias van Aartsen, and addressed by the Romanian Chairman-in-Office, Minister Mircea Dan Geoană. An inspiring keynote address was given by Hilde Johnson, the former Norwegian Minister for International Cooperation and Human Rights.

The seminar was then divided into two simultaneous working sessions. One session dealt with recognition and registration of religious and belief communities. The other discussed restrictions on the activities of religious and belief communities.

The seminar was attended by government representatives of OSCE participating States and (Mediterranean) Partners for Co-operation, representatives of international organisations and representatives of non-governmental organisations from the OSCE region. More than 200 people participated.

A report on the seminar will be submitted to the Permanent Council of the OSCE and will be widely distributed.

A few general conclusions emerged from the discussions:

The right to freedom of religion or belief is enshrined in various global and regional instruments. The most extensive and detailed commitments are embodied in OSCE documents, including the 1989 Vienna Concluding Document and the 1990 Copenhagen Concluding Document. These commitments are buttressed by the growing body of case law issuing from the European Court of Human Rights, the Human Rights Committee and other treaty bodies.

Every person has the freedom to have, maintain, adopt and change his or her theistic, atheistic and non-theistic beliefs, whether traditional, new, well-known or unfamiliar. This freedom denotes the individual's inner, private domain. OSCE participating States may not impose any restrictions whatsoever on internal freedom of religion or belief. People are free to explore other beliefs and to make their own choices as to religious commitment and membership, including taking up, abandoning or dissenting from any religion or belief.

Every person also has the freedom, either alone or in community with others and in public or in private, to manifest his or her religion or belief in teaching, practice, worship and observance. This freedom denotes the individual's outer domain. This external freedom of religion or belief is not strictly a personal and intimate matter of the individual and may therefore be restricted under certain conditions. OSCE participating States have committed themselves to impose such restrictions only by law and when they are necessary in a democratic society to

protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The limitations should be proportionate to the specified aim and not used to undermine the underlying rights and freedoms that are guaranteed by OSCE documents.

OSCE documents neither encourage nor discourage participating States from imposing registration requirements on religious and belief communities. If a participating State chooses to impose local or national registration requirements, such requirements should not become a precondition for the enjoyment of the rights and freedoms set out in OSCE documents. When certain additional rights and privileges are provided following local or national registration or re-registration, OSCE participating States must ensure that the registration requirements are transparent, non-discriminatory, and serve a legitimate purpose as agreed in OSCE documents.

In both working sessions the need for transparency was emphasized, for instance on how participating States are implementing their commitments and facing their challenges in law and practice. The possibility of a broad public dialogue on all levels of society was suggested. States should also consider inviting groups affected and interested to share their views on laws that are being prepared. The wish for more exchange of information, jurisprudence and best practices at national and international levels was repeatedly expressed.

Finally, the work of the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief was welcomed. The Panel was encouraged to undertake further study, analysis and dissemination of information regarding the issues addressed during the seminar, for instance, by convening expert meetings, by using internet tools, reviewing draft legislation and encouraging discussion within participating States.

The Hague, 26 June 2001

Working Session Reports

A Report of Working Session 1
"Recognition and Registration of Religious and Belief Communities: What is Permissible in Law and Practice?"
Rapporteur: Malcolm Evans

I Review of the Discussion

In two broad-ranging sessions many aspects of recognition and registration were discussed from a practical and theoretical perspective. A number of common themes and general understandings emerged. There was no attempt to produce formal answers to specific questions outlined in the agenda, but this was not the purpose. Rather, the discussions within the Working Session made clear the template within which further consideration of these issues could take place, gave some guidance concerning the basic parameters pertaining to these questions and offered some concrete recommendations for further activities. These matters will be reviewed in the following sections.

A Background Factors

The discussions revealed that the question of registration and recognition of religious and belief communities is potentially sensitive and raised issues which were of importance throughout the OSCE area. Its importance is not limited to particular countries or regions.

At the same time, there was widespread acceptance of the important role that religious and belief communities play in contemporary society within OSCE participating States and the fact that it manifests itself in a variety of legal relationships, reflecting the various historical, traditional and cultural factors of the particular countries concerned.

B Basic Issues

The central issue concerns the function of registration: what is its purpose? It is clear that registration is not a prerequisite for the enjoyment of freedom of religion of belief. This right is to be enjoyed individually and collectively, irrespective of whether registration has been sought or granted. Of course this does not mean that the enjoyment of this freedom is absolute. Outward manifestations of religion or belief may be the subject of legitimate restrictions. The narrow set of circumstances under which such limitations are possible was the topic considered in Working Session 2.

What, then, is the role of registration? It was recognised that virtually all states have requirements that must be fulfilled for groups of any nature to be granted degrees of status, gain exemptions or benefit from privileges or exercise what would otherwise be civil functions. It was also recognised that different criteria

might be relevant for different purposes. This gives rise to the following questions:

- Are there any functions undertaken by religious and belief communities which are so intimately connected with the enjoyment of freedom of religion or belief that registration cannot in any way be relevant to their exercise? Given that freedom of religion or belief is not contingent on the registration of the belief in question, it is likely that the answer to this question is positive. There is, therefore, a need to consider and identify the range of matters which fall into this category. It should be recalled that this does not mean that it is impossible to legitimately restrict a particular form of manifestation of religion or belief.

- Once it is established that the purpose in question is one for which registration may legitimately be required, the next question concerns the types of criteria that can be employed, for example: the size of the membership of the community in question, property ownership, and residence.

- What are the thresholds/details of the criteria which are to employed?

C The Basic Tension

Underlying the discussions was a basic tension between two different approaches to registration and registration requirements. The first approach is essentially facilitative - that is, intended to assist religious and belief communities to exercise and enjoy freedom of religion or belief by enabling them to have access to the forms of legal personality necessary for the functions in question or to qualify for the benefits that the law provides for such groups. The second approach is essentially a control function – that is, intended to be used as a means to prevent such groups from engaging undesirable activities.

When seen in this light, the discussions reflect a realisation that it is the facilitative rather than the control function which should provide the guiding principle. Examples were given of the ineffectiveness of registration as a control device to prevent otherwise unlawful activity and it seems that there is no reason why provisions of the criminal law should not be used to deal with the problems that do arise. Denying registration, or re-registration, appeared to be a disproportionate response in many instances. In those states where registration is provided for, it should form an element of the process through which freedom of religion or belief is enjoyed, not fettered.

D Resulting Framework

What are the results of this approach?

- It is important to ensure that appropriate criteria are applied, which relate to the particular purpose for which registration is required.
- The legislation providing for registration should be clearly formulated and leave as little room as possible for discretion in its application.

- A further question concerns the nature of the decision-making process. There may be advantages in registration decisions being made by judicial order rather than by administrative measures or ministerial decree.
- The level at which registration is to be sought and granted and at which it is effective needs to be carefully considered. Serious issues have arisen in situations where decisions taken at national level are not reflected or carried through at local level, and vice versa. Similarly, where decisions taken at local level are only effective within particular localities, there is a need to ensure that a consistent approach is taken.

E Discrimination in Practical Application

One of the greatest problems concerns the discriminatory effect of apparently neutral criteria. Such discriminatory effects may be the unintended byproduct of unchallenged assumptions concerning the nature of religious and belief groups that might legitimately seek registration. Alternatively, it has to be accepted that there is a danger of apparently neutral provisions and definitions being used as a mask for deliberately discriminatory purposes. It is critical that discriminatory elements of registration systems be identified and eliminated.

It is equally important that discrimination does not occur between religious and non-religious groups. If religious and belief communities need to be recognised in order to be able to function as legal entities, they must not be in a worse position than any other group seeking this or similar status.

II Recommendations and Observations

A Recommendations

A recurring theme was the need for more information concerning the problems faced both by authorities and by groups seeking registration. This would enhance understanding of what motivates states to adopt registration laws, what criteria are used and the thresholds at which they are set. This could be complemented by the experiences of those who have sought registration, successfully and unsuccessfully. Identifying the problems that groups have encountered in complying with registration requirements would be a first step towards finding solutions. Exchanges of information and experience are essential if there is to be progress towards identifying best practices. In the light of this, it is probably premature to seek to identify substantive recommendations concerning the functions for which it is legitimate to consider imposing registration requirements and the appropriate criteria to be used. Rather, and as a step towards the achievement of such objectives at national and international level, it was suggested that the OSCE/ODIHR Advisory Panel might profit from:

- Issuing questionnaires concerning legislative and administrative arrangements
- Encouraging groups to submit 'narratives' of their experience
- Incorporating this material into its web-page project

- Seeking to further disseminate such information though a variety of means and in as many languages as possible, including written publications and compilations of practices
- Convening regional seminars to address the relevant issues with the appropriate actors
- Identifying means of encouraging discussion within states at both national and local levels

B Observations

- The office of the Ombudsman could be utilised more widely to consider the working of the registration process. There will often be a reluctance, or practical inability, to challenge negative decisions through the Courts. Moreover, judicial procedures may be extremely lengthy and the freedom of religion or belief of members of a group using such procedures might be infringed in the mean time.
- A valuable role can be played by National Commissions or Committees which draw together representatives of various religious and belief communities and which can inform thinking while legislation is being drafted, and provide a means for evaluating its practical impact. It is important to ensure that membership of, or access to, such bodies is possible for all, including groups whose patterns of belief are not reflected in hierarchical organisational structures.
- The particular needs of vulnerable groups need to be taken into account in the framing of legislation and/or administrative procedures.
- There is a need for as broad a public debate as possible on these issues.
- The desirability of further standard-setting exercises should be evaluated in the light of the information garnered in such a process.
- There is a need for co-ordination with other international organisations, including the Council of Europe and the United Nations.

C Final Comment

There is an overwhelming need for the process surrounding registration to be as open and transparent as possible. This should be reflected in the discussions concerning registration laws, in the explanations given concerning the choice and relevance of the criteria set, and the purposes for which registration is required. Moreover, it is vital that decisions concerning registration be adequately underpinned so that they are open to proper scrutiny and appeal. All of this would help ensure that the purpose of registration was genuinely facilitative and best accorded with the realisation of freedom of religion or belief. It is useful to recall that the view that registration is not a prerequisite for the enjoyment of freedom of religion or belief and, when required by the state, must not act as a fetter upon it was often expressed in the Working Session. Where they exist, registration laws must apply in law and be applied in an open, transparent and non-discriminatory fashion, aimed at facilitating the enjoyment of this basic human right.

B Report of Working Session 2 "Restrictions on the Activities of Religious and Belief Communities: What is Permissible in Law and Practice?" Rapporteur: Jeremy Gunn

I Review of the Discussion

Working Session 2 focused on one of the most complicated and poorly understood areas of international human rights: the question of when and how governments legitimately may limit manifestations of religion or belief. The lively discussion included interventions by various governments, NGOs, and by religious and belief groups that have directly experienced limitations of their activities by governments. A number of concrete recommendations were made regarding follow-up steps that should be taken by the OSCE and by participating States.

Freedom of religion or belief is widely recognised as a fundamental human right. It is commonly described as including two aspects: first, the realm of a person's internal beliefs, and second, an external realm, where beliefs are manifested in many forms, such as teaching, group worship, and wearing certain types of clothing. International human rights doctrines usually describe the first aspect as being "absolute", and one where governments are prohibited from interfering in any way.

In the external realm, however, international human rights instruments provide that under certain specified and narrow circumstances governments may limit external manifestations of religion or belief. In relevant OSCE instruments, the most important statements of the circumstances where governments may limit manifestations of religion or belief are principle 17 of the Vienna Concluding Document of 1989[1] and principle 24 of the Copenhagen Concluding Document of 1990.[2]

These principles include some of the most important commitments made by OSCE participating States. The most important elements of these principles include the express provisions that:

- restrictions are permissible only if they are consistent with international law and other international commitments;
- any restrictions should be understood as *exceptions*;
- governments should not abuse restrictions;
- restrictions should not be applied in an arbitrary manner; and
- the effective exercise of the rights must be ensured.

Working Session 2 assumed that the OSCE commitments of the participating States, including principle 24 of the Copenhagen Concluding Document, should form the basis of its analysis and recommendations. While the Vienna and Copenhagen Concluding Documents were assumed to be the foundation for the

1 For the text of this principle, see Section VIII(A)(III).
2 For the text of this principle, see Section VIII(A)(IV).

Working Session's analysis and recommendations, participants believed that further clarification and analysis of these provisions would be useful.

Professor Nowak's presentation outlined how limitations clauses are analysed under international law and what the restrictions are upon governments' ability to limit manifestations of religion or belief. Any limitation imposed by a government that would limit manifestations of religion or belief must first be "prescribed by law". Second, it must be made pursuant to one of five specific purposes. Third, it must be "necessary in a democratic society." The government must meet each of these three requirements and each needs further elaboration.

To be "prescribed by law" the limitation must be pursuant to a law that is transparent and that has been made available to the public. Governments cannot restrict manifestations of religion or belief by, for example, using arbitrary police actions to suppress unpopular groups.

In order for a government's limitation to be proper, it must be pursuant to one of five purposes: protection of public safety, order, health, or morals or the fundamental rights and freedoms of others. Professor Nowak stressed that these five grounds are to be narrowly construed. Governments are not permitted to use vague or broad justifications for limiting the right to manifestations of religion or belief. "Public order" would include only limited activities such as regulating traffic. "Public order" should not be confused with a similar sounding French legal expression used in civil and administrative law and private international law and which relates to the fundamental public policies of a society, *l'ordre public*.

Finally, limitations must be "necessary in a democratic society" and must be narrowly construed. Such restrictions must be "proportionate" to the harm that a government might wish to prevent and they may not be excessively broad. Ultimately, according to the Copenhagen Concluding Document, any restrictions must attempt to preserve the essential nature of the right. Professor Nowak observed that the way in which governments are mostly likely to violate these standards is by imposing restrictions that improperly favour traditional or majority religions and that discriminate against newer or smaller religious and belief groups. Such discriminatory restrictions violate international standards generally and OSCE commitments specifically.

Following Professor Nowak's opening statement, many observed that several OSCE participating States are not complying with OSCE standards in that they are imposing restrictions on some religious or belief groups that are not imposed on others. Professor Nowak and others concluded that one of the reasons for such discriminatory treatment arises in the context of emerging multiculturalism. Other causes of increasing multiculturalism include the opening of the countries of central and eastern Europe after 1989, the abolishment of borders between EU countries, the immigration of Muslims into Europe and North America, the movement of missionaries into previously traditional societies, and the emergence of newer or non-traditional religious and belief groups. In some OSCE participating States, this growing multiculturalism is not necessarily welcomed, and is sometimes be met with suspicion or antagonism. Specifically in the area of religion and belief, some governments that are accustomed to working with a small number of long-established religions have been imposing restrictions on

newer or less conventional religious or belief groups that are not imposed on traditional religions. This has led to the types of discrimination that are prohibited under international law and OSCE standards. Such discriminatory restrictions were described as among the most significant violations of OSCE standards.

Several participants raised concerns about violations of freedom of religion or belief by governmental actions that restrict individuals and groups from persuading others to join their group or to remain within their group. There are a number of terms that are used to describe these practices, including "proselytism," "missionary activity," "indoctrination," "mental manipulation," "improper inducement," and "fraud." The terms are sometimes employed in a pejorative manner and their meanings can be quite vague and subject to manipulation by government officials. While the participants clearly recognised the importance of human dignity and the important government interest in preventing abuse of the integrity of the person, there was also a concern that laws with such vague terms could be used to attack certain unpopular groups. Thus an unpopular religious or belief group might be accused of engaging in "improper inducement" while a favoured group that engaged in identical activities might be left alone.

II Recommendations

The participants made a number of recommendations regarding ways the OSCE might be able to respond to the problems presented by governmental restrictions on manifestations of religion or belief. They included:

- The OSCE should convene an expert-level seminar or enlist the efforts of the OSCE/ODIHR Advisory Panel to analyse, under OSCE standards pertaining to freedom of religion and belief, the meaning and implication of terms such as "proselytism," "missionary activity," "indoctrination," "mental manipulation," "improper inducement," and "fraud." Although participants agreed that the term "sect" is a pejorative term, they disagreed as to whether it would be appropriate for an experts' seminar to consider questions such as what is "religion" and what is a "sect".
- The OSCE should convene an expert-level seminar or enlist the efforts of the OSCE/ODIHR Advisory Panel to analyse and elaborate OSCE standards pertaining to permissible governmental limitations on freedom of religion or belief.
- The OSCE/ODIHR Advisory Panel should consider the question of how best to implement recommendations pertaining to limitations on freedom of religion or belief and issue a report as appropriate.
- The OSCE/ODIHR Advisory Panel should issue a report on current laws and practices with regard to conscientious objection.
- All OSCE participating States that are considering enacting or amending laws that might limit manifestations of religion or belief should ensure that draft laws are made available to the public in a timely way and that interested persons and those who are likely to be affected by such laws have an opportunity to participate in meaningful public discussions and debates about the proposed laws. The use of round tables and of written suggestions should be particularly encouraged.

- All OSCE participating States that are considering enacting or amending laws that might limit manifestations of religion or belief should be encouraged to submit the draft legislation to independent international bodies - such as the OSCE/ODIHR Advisory Panel or the High Commissioner for National Minorities - for independent expert review for the purpose of receiving advice on whether proposed laws might improperly limit manifestations of religion or belief. Draft legislation should also be reviewed by recognised and independent experts within their countries, such as sociologists of religion and respected human rights scholars.
- All OSCE participating States that are considering enacting or amending laws that might limit manifestations of religion or belief should be encouraged to make use of appropriate internal state mechanisms for review of the compatibility of the proposed laws with constitutional and human rights obligations. Such internal state review mechanisms might include, for example, the *Conseil constitutionnel*, Council of State, or Parliamentary committees on Human Rights.
- NGOs are encouraged to be active in responding to draft legislation by participating in round table discussions, offering written comments, and by communicating with groups that are likely to be affected by legislation.
- The legislatures of all OSCE participating States that are considering enacting or amending laws that might limit manifestations of religion or belief should be encouraged to articulate clearly the grounds for enacting the legislation and to hold hearings and accumulate evidence to explain the reason for the legislation.
- OSCE participating States should, in conformity with OSCE commitments, be willing to enter into dialogue with religious and belief groups that so desire.
- All OSCE participating States should be encouraged to ratify appropriate international and regional human rights conventions without reservations, and they also should be encouraged to ratify optional protocols that provide for international supervision and individual complaints.
- OSCE participating States should develop and implement standards and training for police and security officials who may have responsibility for enforcing laws that restrict manifestations of religion or belief. Such training and standards should emphasise the importance of complying with international human rights norms and that the enforcement of the law should not be conducted in a discriminatory or antagonistic manner.
- OSCE participating States should ensure that police and security officials fairly enforce laws against discrimination, particularly in cases where religious and belief groups are attacked by hostile individuals and groups.